

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) FN-101B-CIP-US
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>June 10, 2010</u> Signature <u>/Gerardo Ubau/</u> Typed or printed <u>Gerardo Ubau</u> name <u></u>	Application Number 10/773,092	Filed February 4, 2004
	First Named Inventor <u>Yury Prilutsky</u>	
	Art Unit 2622	Examiner Carramah J. Quiett

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record. 43132
Registration number .

attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34

/Andrew Vernon Smith/

Signature

Andrew V. Smith

Typed or printed name

408-218-3315

Telephone number

June 10, 2010

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

<input checked="" type="checkbox"/>	*Total of <u>1</u> forms are submitted.
-------------------------------------	---

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

US PATENT APPLN SERIAL NO. 10/773,092
PRE-APPEAL BRIEF REQUEST FOR REVIEW ATTACHMENT SHEETS

**I. THE REJECTION OF CLAIMS 1-27, 29-32, 57-77, 79-85, AND 89-104
UNDER 35 USC SECTION 103 BASED ON THE COMBINATION OF
BENATI (US PATENT 5,748,764), SOBEL ET AL. (US PATENT 6,300,935)
AND MALLOY DESORMEAUX (US PATENT 6,501,911) REPRESENTS A
FIRST CLEAR ERROR**

CLAIMS 1-27, 29-32, 57-77, 79-85, and 89-104 are allowable under 35 USC 103, because no combination of Benati, Sobel et al. and Malloy Desormeaux teaches or suggests “a red-eye filter for modifying an area within a digital image acquired by the apparatus, the area being indicative of a red-eye phenomenon, the modifying being based on detecting the red eye phenomenon including analyzing a subsample resolution representation of selected regions of said digitized image....” Benati discloses segmentation of an image at element 220 illustrated at Figure 3 in a detection phase. Benati also discloses to use a same or different resolution during a fix phase. However, Benati does not teach nor suggest modifying an area within a digitized image indicative of a red-eye phenomenon based on an analysis of a subsample resolution representation of selected regions of said digitized image. Advantageously, significant data are maintained while reducing an amount of pixel-wise calculations involved in the analyzing, which can be generally costly operations. With respect to Malloy Desormeaux, the preview image is an entirely different image than the main digital image. The preview image of Malloy Desormeaux is captured at a different, earlier time than the main digital image. Between the time of capture of the preview image and main image of Malloy Desormeaux, a subject may move her eyes such that a red eye phenomenon may appear in the main image but not in the preview image. Moreover, registration/alignment of preview and main images disadvantageously involves a layer of significant complexity that is not present in Applicants’ invention as set forth at CLAIMS 1-27, 29-32, 57-77, 79-85, and 89-104. Applicants analyze a precapture image, as recited at claim 1, to determine a degree of subsampling and not to detect red eye phenomenon. Soble et al. also do not teach nor suggest this feature. As none of Benati, Soble et al., nor Malloy Desormeaux, alone or in combination, teaches or suggests this feature, Applicants’ claims are allowable under 35 USC 103. Claims 28 and 78 are also allowable under 35 USC 103 for the same reasons, and because neither does Nicponski (US patent 5,974,189) teach nor suggest this feature.